Stephan M. Brown, Esq. (SBN 300563)
Edward A. Smith, Esq. (SBN 139950)
The Bankruptcy Group, P.C.
3300 Douglas Blvd., Suite 100
Roseville, CA 95661
800-920-5351
916-242-8588 (fax)
eric@thebklawoffice.com

Proposed Attorneys for Debtor in Possession
CS360 Towers, LLC

UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF CALIFORNIA

In re: CS360 Towers, LLC, a California limited liability company Debtor in Possession.	Case No.: 17-20731 Chapter 11 Adv. No.
CS360 Towers, LLC, a California limited liability company Plaintiff vs. Raymond E. Sahadeo, Chris Williams, Guy Swanson, Tommy Le, Brent Leuschen, Pete Noack, Dhanraj Sahadeo, Mick Schimmel, and Tim Schimmel Defendants.	VERIFIED ADVERSARY COMPLAINT FOR INJUNCTIVE RELIEF [11 USC § 105(a) and FRBP Rule 7001(7)] Date: To Be Set by Court Time: Place: United States Bankruptcy Court Matsui United States Courthouse 501 I Street, Suite 3-200 Sacramento, CA 95814

Debtor/Plaintiff, CS360 Towers, LLC, by and through counsel, hereby files this Verified Adversary Complaint for Injunctive Relief and alleges as follows:

STATEMENT OF JURISDICTION AND VENUE

1. On February 3, 2017, this bankruptcy case was commenced by debtor/plaintiff, CS360 Towers, LLC, by the filing of the herein chapter 11 voluntary petition.

2. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and (2) and 1334(a) and General Order No. 242-A of the District Court for the Eastern District of California, as this is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (I), and (J).

3. Venue properly lies in this judicial district pursuant to 28 U.S.C. § 1409 in that the instant proceeding is related to the debtor's case under Title 11, Chapter 11 of the United States Code that is still pending.

4. The filing of the herein adversary complaint by debtor/plaintiff is authorized by Federal Rules of Bankruptcy Procedure, Rule 7001(7) where debtor/plaintiff seeks to obtain an injunction or other equitable relief.

5. The debtor/plaintiff, CS360 Towers, LLC ("CS360 Towers"), is a limited liability company under the laws of the State of California.

6. Defendant Raymond E. Sahadeo ("Sahadeo") is and at all material times mentioned in this Complaint was an individual residing in the County of Yolo, State of California.

7. Defendant Chris Williams is and at all material times mentioned in this Complaint was an individual residing in the County of Yolo, State of California.

8. Defendant Guy Swanson is and at all material times mentioned in this Complaint was an individual residing in the County of Yolo, State of California.

9. Defendant Tommy Le is and at all material times mentioned in this Complaint was an individual residing in the County of Sacramento, State of California.

10. Defendant Brent Leuschen is and at all material times mentioned in this Complaint was an individual residing in the County of Yolo, State of California.

11. Defendant Pete Noack is and at all material times mentioned in this Complaint was an individual residing in the County of Sacramento, State of California.

12. Defendant Dhanraj Sahadeo is and at all material times mentioned in this Complaint was an individual residing in the County of Yolo, State of California.

13. Defendant Mick Schimmel is and at all material times mentioned in this Complaint was an individual residing in the County of Yolo, State of California.

14. Defendant Tim Schimmel is and at all material times mentioned in this Complaint was an individual residing in the County of Sacramento, State of California.

FACTUAL ALLEGATIONS

15. Plaintiff refers to and incorporates herein Paragraphs 1 through 14.

16. On or about March 29, 2011, plaintiff was organized and established for purposes of obtaining residential condominium units and commercial/office space units within a real property development known as Bridgeway Towers North located at 500 N Street in the city of Sacramento, California, and thereafter developing and operating the property as an investment for the benefit of its members.

17. Plaintiff is organized and operates under the terms of a limited liability company operating agreement dated March 29, 2011 ("Operating Agreement").

18. Between March 29, 2011 and January 23, 2017, the debtor was managed by two designated managers, Sahadeo and Mark D. Chisick.

19. Pursuant to the terms of the Operating Agreement, on December 5, 2016 a letter was transmitted on behalf of the debtor and the remaining 80% of its members to Sahadeo advising him that he was in breach of the Operating Agreement and that he would be removed as a manager unless his breaches were timely cured.

20. Sahadeo failed to timely cure his breaches of the Operating Agreement and on January 23, 2017, the remaining 80% of debtor's members acknowledged Sahadeo's removal as a manager of the LLC pursuant to the terms of the Operating Agreement.

21. Said Acknowledgment was properly and duly transmitted to Sahadeo and was accompanied by a letter informing Sahadeo that he is no longer a manager of the LLC, and a request that he vacate the CS360 Towers business premises.

22. Sahadeo has allowed several of his friends/agents to occupy the business premises without paying rent, allegedly due to services being provided on behalf of the LLC. Said friends/agents are the additionally named defendants in this complaint. Termination letters were properly transmitted to these additionally named defendants, informing them that any services they were allegedly providing to the LLC were no longer required, and they were also requested to vacate the business premises.

23. On the evening of January 24, 2017, plaintiff attempted to secure the business premises and obtain control of the finances by changing the locks and installing a new property manager, however, on January 25, 2017, Sahadeo arranged for his own locksmith to change the

locks, securing possession for himself, and maintaining control of the operations of the LLC without authorization to do so.

24. Sahadeo and the additionally named defendants have refused to vacate the business premises and Sahadeo continues to interfere with operations of the LLC.

25. There is a pending state court action, in which a TRO hearing was held on the issue of possession on January 27, 2017, however, the honorable superior court Judge Brown requested a noticed motion and hearing before ruling on this issue. Due to pending foreclosures, Debtor was forced to file for Chapter 11 prior to obtaining injunctive relief in the state court action.

26. Based on the documents filed in the TRO by Sahadeo, it appears that Sahadeo believes that his removal as a manager requires adjudication and a court order. However, no authority is provided which would require adjudication on this issue, and Sahadeo has not filed any lawsuits seeking to adjudicate this issue.

27. Sahadeo also claims that several of the debtor-owned commercial spaces are leased to various tenants, although there is no evidence of any rents being collected on said commercial units.

28. One such occupant, Mr. Clarke, declares under penalty of perjury that he has a lease agreement with debtor for $4,000 per month. However, the referenced lease agreement is with an entity other than CS360 Towers, LLC. Furthermore, there is no evidence of any rent being collected from Clarke. If any rent has ever been paid by Clarke, it does not appear to have been paid to CS360 Towers, LLC, as it does not appear on any of the reports from the current property management company, HomePointe Property Management. Additionally, debtor's ledger of all tenant deposits produced by HomePointe Property Management does not identify Clarke, even

though the proffered lease agreement indicates a deposit of $4,000. If Clarke has paid a deposit for the commercial unit, there is no record of it on file with the debtor.

29. Based on the circumstances and information available at this time, it is reasonable for plaintiff to believe and allege that defendant is renting one of more debtor-owned commercial units in the name of another entity which has no ownership interest in the units, and is misappropriating rents collected for the commercial units, if any, because the rents are not being deposited into an account owned by debtor/plaintiff. These events appear to have occurred prior to debtor filing the instant Chapter 11 case, and continue to occur since the case has been filed.

30. Plaintiff estimates that the fair rental value of the nine commercial units, totaling approximately 6,000 square feet, for which no rent is being collected and deposited into plaintiff's accounts, is within a range of between $12,000 to $18,000 per month.

31. A secondary result of the state court action is that HomePointe Property Management refuses to release rents to debtor, currently totaling $135,446.23, because Sahadeo appears to be contesting the ownership of said funds.

32. Plaintiff alleges that it is in the best interests of the estate that all commercial units be rented out at fair market value, and that any and all rents be deposited with plaintiff/debtor as the owner/landlord.

CLAIM FOR INJUNCTIVE RELIEF
(11 U.S.C. § 105(a))

33. Plaintiff refers to and incorporates herein Paragraphs 1 through 32.

34. Under 11 U.S.C. § 105(a), the Court may issue any order necessary or appropriate to carry out the provisions of the Bankruptcy Code.

35. Plaintiff, as the debtor in possession, owes a fiduciary duty to creditors and to the bankruptcy estate. As such, plaintiff has a duty to maximize rental income for the benefit of the bankruptcy estate, and to ensure that all rents are collected and deposited into the debtor in possession bank account.

36. Sahadeo and the other defendant's refusal to vacate the business premises is preventing plaintiff/debtor from leasing the commercial units to paying tenants.

37. Sahadeo's refusal to vacate the business premises is directly interfering with the debtor in possession's ability to collect and account for all rents, and to otherwise properly perform its duties and responsibilities in administering the bankruptcy estate.

38. Sahadeo's presence at the business premises is causing immediate and irreparable harm in that plaintiff alleges Sahadeo has previously misappropriated LLC assets in acts of self-dealing, and is preventing the debtor from maximizing its rental income for the benefit of the estate and its creditors.

39. It is necessary that injunctive relief be granted to allow plaintiff, as the debtor in possession, to have the ability to take all reasonable and necessary action to remedy the situation as referenced herein in order to properly administer the bankruptcy estate.

40. Plaintiff is informed and believes that the granting of a preliminary injunction may cause some harm to defendants, however, the harm in not granting the preliminary injunction is much greater to plaintiff. The bankruptcy estate is presently losing an estimated $12,000 to $18,000 per month for non-collection of rents for the commercial units, unless injunctive relief is granted. In contrast, defendants each stand to lose the fair rental value of commercial units elsewhere, an expense ordinarily paid for the use of commercial units. Granting injunctive relief

will simply ensure that fair market rents are paid to the estate, and not to Sahadeo, who has no legal right to collect or personally benefit from the collection of rents that belong to the bankruptcy estate.

41. Plaintiff is informed and believes that if and when this case goes to trial, that it is more likely than not that plaintiff will prevail on the merits because defendants are preventing debtor/plaintiff from fulfilling its fiduciary obligations in administering the bankruptcy estate, and because defendants are trespassers with no authority to occupy the business premises of debtor/plaintiff.

42. Plaintiff is informed and believes that plaintiff, as the debtor in possession, owes a fiduciary duty to act in the best interests of the estate, including the interests of creditors. Unless injunctive relief is granted the creditors of the bankruptcy estate will be severely prejudiced as a result of a loss of an estimated $12,000 to $18,000 per month in commercial rents. Plaintiff owes a fiduciary duty to creditors and the bankruptcy estate, and injunctive relief, as prayed herein, is necessary to allow plaintiff to properly discharge its fiduciary duties as the debtor in possession.

CLAIM FOR INJUNCTIVE RELIEF
(Trespass)

43. Plaintiff refers to and incorporates herein Paragraphs 1 through 42.

44. Since January 25, 2017 Sahadeo and the additionally named defendants have and will continue to occupy the premises without any right, authority, privilege, or necessity to do so. Defendants are trespassing on property owned by debtor/plaintiff.

45. Until January 23, 2017, Sahadeo occupied one of the commercial units based upon his position as a manager of debtor/plaintiff. However, effective January 23, 2017, Sahadeo was terminated as a manager of debtor/plaintiff pursuant to the terms of the Operating Agreement.

Since January 23, 2017, Sahadeo is not recognized by debtor/plaintiff as a manager of the LLC, and as such, has no right to occupy any of the units owned by debtor/plaintiff. Debtor/plaintiff has demanded that Sahadeo vacate the unit, but he has refused to do so. Sahadeo, as a former manager, is not considered a tenant, and has no legal right to maintain legal possession of the premises. Sahadeo's status is that of a trespasser.

46. Likewise, the other named defendants continue to occupy commercial units on the premises claiming to provide services to the LLC in lieu of rent, however, no rent was ever paid by said defendants, and any services they may have been providing were terminated. As such, said other defendants are also trespassers.

47. By reason of defendants' conduct, plaintiff/debtor has been and will continue to be deprived of the use and possession of the property until defendants voluntarily vacate or are removed by means of injunctive relief entered by the Court.

WHEREFORE, Plaintiff prays for injunctive relief, including a preliminary injunction, or any other relief that the Court deems just and proper.

Dated: February 24, 2017

The Bankruptcy Group, P.C.

By /s/ Stephan M. Brown____
Stephan M. Brown,
Proposed Attorney for
CS360 Towers, LLC